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Forbes v New York City Tr. Auth.
2011 NY Slip Op 07298
Decided on October 18, 2011
Appellate Division, First Department
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Decided on October 18, 2011

Saxe, J.P., Friedman, Moskowitz, Freedman, Richter JJ.

5766N 101558/06

[*1]Patricia Forbes, Plaintiff-Respondent,

v

New York City Transit Authority, et al., Defendants-Appellants.

Steven S. Efron, New York (Renée L. Cyr, of counsel), for appellants.

Roth & Roth, LLP, New York (David A. Roth of counsel), for respondent.

Order, Supreme Court, New York County (Michael D. Stallman, J.), entered May 5, 2010, which, in an action for personal injuries, denied defendants' motion to vacate an order granting plaintiff's motion to strike their answer for failure to comply with discovery orders, unanimously affirmed, without costs.

Denial of the motion was proper inasmuch as defendants' proffered excuse of "law office failure" was not credible (*see Gonzalez v Praise the Lord Dental*, 79 AD3d 550 [2010]). Defendants' pattern of noncompliance with court-ordered disclosure over a period of several years gives rise to an inference of willful and contumacious conduct that warranted the striking of the answer (*see Gibbs v St. Barnabas Hosp.*, 16 NY3d 74, 81 [2010]; *Bryant v New York City Hous. Auth.*, 69 AD3d 488 [2010]). Furthermore, the discovery responses that defense counsel claims would have demonstrated compliance with the discovery orders post-dated the return date of the motion (*see Gonzalez* at 550).

Defendants also failed to demonstrate a meritorious defense to the action. The evidence offered solely on reply is entitled to no consideration by a court (*see Guzman v Mike's Pipe Yard*, 35 AD3d 266 [2006]; *Lumbermens Mut. Cas. Co. v Morse Shoe Co.*, 218 AD2d 624, 626 [1995]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 18, 2011

CLERK

[Return to Decision List](#)